

MONTANA LEGISLATIVE HISTORY

Chapter 195 1981

Bill H 690 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 2/17 ☒ c

_____ c

_____ c

_____ c

Date Out 2/20 ☒ c

S. Committee on Judiciary

Hearing Date(s) 3/10 ☒ c

_____ c

_____ c

_____ c

3/14 ☒ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

2ND READING: 2/21 YEAS: 50; NAYS: 38
3RD READING: 2/24 YEAS: 81; NAYS: 8

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON JUDICIARY: 3/2
HEARING: 3/10
REPORT: 3/25, BE CONCURRED IN, AS AMENDED
ON MOTION, 3/27, REREFERRED TO COMMITTEE ON JUDICIARY
BILL DIED IN COMMITTEE

HB 690—KEYSER, KEEDY, MATSKO, ET AL--TO GENERALLY REVISE AND CLARIFY CHAPTERS PERTAINING TO POSTCONVICTION AND HABEAS CORPUS RELIEF....

INTRODUCED: 2/9
REFERRED TO COMMITTEE ON JUDICIARY: 2/9
HEARING: 2/17
REPORT: DO PASS, 2/20
2ND READING: 2/21 YEAS: 84; NAYS: 5
3RD READING: 2/24 YEAS: 85; NAYS: 14

TRANSMITTED TO SENATE: 2/24
REFERRED TO COMMITTEE ON JUDICIARY: 3/2
HEARING: 3/10
REPORT: 3/16, BE CONCURRED IN
2ND READING: 3/18, BE CONCURRED IN
3RD READING: 3/20, YEAS: 47; NAYS: 2

RETURNED TO HOUSE: 3/20
TRANSMITTED TO GOVERNOR: 3/26
ACTION: SIGNED, 3/30
CHAPTER 195

HB 691—DUSSAULT, STOBIE, KANDUCH, ET AL--TO CREATE THE POSITION OF EXTENSION FORESTER....

INTRODUCED: 2/9
REFERRED TO COMMITTEE ON APPROPRIATIONS: 2/9
HEARING: 3/21
BILL DIED IN COMMITTEE

HB 692—O'CONNELL, TEAGUE, MANNING, ET AL--TO RAISE THE VALUE OF ADVERTISING MATTER OR NOVELTIES THAT CAN BE FURNISHED TO A BEER RETAILER BY A BREWER OR WHOLESALER....

INTRODUCED: 2/9
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 2/9
HEARING: 2/18
REPORT: DO PASS AS AMENDED, 2/18
2ND READING: 2/21, YEAS: 90; NAYS: 3
3RD READING: 2/25, YEAS: 87; NAYS: 10

TRANSMITTED TO SENATE: 2/25
REFERRED TO COMMITTEE ON BUSINESS AND INDUSTRY: 3/3
HEARING: 3/20
REPORT: 3/21, BE CONCURRED IN, AS AMENDED
2ND READING: 3/25, BE CONCURRED IN
3RD READING: 3/27, YEAS: 41; NAYS: 9

RETURNED TO HOUSE WITH AMENDMENTS: 3/27
2ND READING: 4/8 BE NOT CONCURRED IN MOTION,
YEAS: 84; NAYS: 2
ON MOTION, 4/9, REFERRED TO CONFERENCE COMMITTEE
ON MOTION, 4/14, CONFERENCE COMMITTEE DISSOLVED, FREE CONFERENCE

HOUSE BILL NO. 690

INTRODUCED BY KEYSER, KEEDY, NATSKO,
MOORE, BENNETT

BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE

IN THE HOUSE

February 9, 1981	Introduced and referred to Committee on Judiciary.
February 20, 1981	Committee recommend bill do pass. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
	Second reading, do pass.
February 23, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 85; Noes, 14. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 16, 1981	Committee recommend bill be concurred in. Report adopted.
March 17, 1981	Motion pass consideration.
March 18, 1981	Second reading, concurred in.
March 20, 1981	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 21, 1981	Returned from Senate. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

1 HOUSE BILL NO. 690
2 INTRODUCED BY George Keedy mkh
3 BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE
4 Bennett
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY CHAPTERS 21 AND 22 OF TITLE 46, MCA, PERTAINING TO
7 POSTCONVICTION AND HABEAS CORPUS RELIEF; AMENDING SECTIONS
8 46-21-101, 46-21-102, 46-21-104, 46-21-105, 46-21-201,
9 46-21-203, AND 46-22-101, MCA."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 46-21-101, MCA, is amended to read:

13 "46-21-101. Circumstances in which validity of

14 sentence may be challenged. A person adjudged guilty of an

15 offense in a court of record who has no adequate remedy of

16 appeal and who claims that sentence was imposed in violation

17 of the constitution or the laws of this state or the

18 constitution of the United States, that the court was

19 without jurisdiction to impose the sentence, or that the

20 sentence was in excess of the maximum authorized by law or

21 is otherwise subject to collateral attack upon any ground of

22 alleged error available under a writ of habeas corpus, writ

23 of coram nobis, or other common law or statutory remedy may

24 petition the court which imposed the sentence or the

25 supreme court--or--any--justice--of--the--supreme--court to

1 vacate, set aside, or correct the sentence."

2 Section 2. Section 46-21-102, MCA, is amended to read:
3 "46-21-102. When petition may be filed. A petition for
4 such relief may be filed at any time ~~after~~ within 5 years of
5 the date of the conviction."

Section 46-21-104, MCA, is amended to read:

"46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Arguments The petition must be accompanied by a supporting memorandum including appropriate arguments and citations and discussion of authorities ~~shall be omitted from this petition.~~"

20 Section 4. Section 46-21-105, MCA, is amended to read:
21 "46-21-105. What grounds for relief waived if not
22 raised. All grounds for relief claimed by a petitioner under
23 this chapter must be raised in his original or amended
24 petition. Any grounds ~~other-than-constitutional-grounds~~ not
25 so raised are waived unless the court on hearing a

subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. When a petitioner has been afforded a direct appeal of his conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in his original or amended petition."

Section 5. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place, and the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it

shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed."

Section 6. Section 46-21-203, MCA, is amended to read:

"46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within 6 months from 60 days of the entry of the order."

Section 7. Section 46-22-101, MCA, is amended to read:

"46-22-101. Who may prosecute writ. (1) Every Except as provided in subsection (2), every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal. Relief for such purposes is limited to the provisions of Title 46, chapter 21."

-End-

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
676	To eliminate earmarked funding for the crime victims compensation program, thus requiring that funding for the program be by leg. appro.	2/7/81	Harper	2/12/81	Do Not Pass 2/19/81	2/19/81
678	Revise the provisions relating to city judges for towns, etc.	2/7/81	Burnett	2/10/81	Do Pass as Amended 2/13/81	2/13/81
689	Providing for the compulsion of incriminating testimony of witnesses before courts, st. agencies, and leg. and regulations.	2/9/81	Keyser	2/17/81	Do Pass 2/20/81	2/20/81
690	Revise and clarify chapters 21 and 22 of Title 46, MCA, pertaining to postconviction and habeas corpus relief.	2/9/81	Keyser	2/17/81	Do Pass 2/20/81	2/20/81
698	To provide that a defendant who is provided with court-appointed counsel may be required upon conviction to repay the costs of counsel.	2/10/81	Meyer	2/16/81	Do Pass as Amended 2/20/81	2/20/81
703	To establish a preference for joint custody awards upon dissolution of marriage.	2/10/81	Seasholtz	2/16/81	Do Pass as Amended 2/20/81	2/20/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 17, 1981

The House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. Rep. Conn was excused. Jim Lear, Legislative Council, was present.

HOUSE BILL 689 REP. KEYSER stated this was a bill the Judiciary Committee had requested. This is to provide for the compulsion of incriminating testimony of witnesses before courts, state agencies, and the legislature.

REP. MATSKO, requestor of the bill, stated the purpose is to provide for "use immunity".

CARROLL BLEND gave the committee EXHIBIT 1. This bill removes the fifth amendment right and the person is required to testify. The alternative is use immunity. It cannot be used against him. BLEND stated this is patterned after a federal law in 1972 and adapted to Montana.

The first change in this bill is that only the prosecutor can ask for immunity. Under the present law either party can ask. The second change this creates is to allow administrative agencies to ask the district courts for immunity orders. At present the legislature would have to ask for transactional immunity. It governs as to what is in the statute.

There were no further proponents.

There were no opponents.

In closing, REP. MATSKO stated information was given to the committee when the bill was requested. It is unfair to take a principal party in an action and let him off. This will help stop people getting off because of immunity.

HOUSE BILL 690 REP. KEYSER stated this was a bill the Judiciary Committee had requested. This is to generally revise and clarify chapters pertaining to postconviction and habeas corpus relief.

REP. KEEDY, requestor of the bill, felt this would address many problems of postconviction relief. Presently there is no time limit. The perception of the public is designed more to promote delays and denials than justice.

JOHN MAYNARD, Attorney General's office, supports this bill. Whenever a person is convicted he has 60 days in which to appeal to the Supreme Court. If he does not file he is precluded from filing. He can, however, petition for postconviction relief. In that case it does nothing more than allow a second appeal. The current postconviction procedure act was from the 1955 Uniform Postconviction Act. This bill would tailor that act to serve

the needs of Montana. The problem is if a person pleads guilty and then waits 5-10 years before he challenges it the state has a problem in trying to retry him again.

This bill would eliminate from 46-21-108 the phrase "any justice of the supreme court". It would limit the time in which a person may petition to five years, which would be comparable to federal rules. It would eliminate the requirement that any argument in support be omitted. Section 4 of the 1955 act language is stricken. The bill also seeks to eliminate the second appeal. Many times the county attorney is served the papers but the Attorney General's office is not notified. Line 15 seeks to clarify what is contemplated. The time from which an appeal must be taken is limited to 60 days. It is currently 6 months. Six months is a big time lag.

There is a big confusion as to where postconviction relief and habeas corpus relief is limited to certain types of actions. It is not just another form of postconviction relief.

There were no further proponents.

There were no opponents.

REP. KEEDY closed the bill.

REP. HUENNEKENS asked about cases concerning a convict acting as his own attorney. Is the bill too restrictive for state pen inmates with the five year limit? MAYNARD stated there are few cases brought to court after five years from conviction. REP. HUENNEKENS wondered if the 60 days would be too restrictive on the inmate. MAYNARD replied the postconviction stage might be a burden on the plaintiff; 90% of cases at postconviction stage are legal actions. The hearings are usually limited to thirty minutes. The work should have been done prior to filing of the petition.

HOUSE BILL 644 REP. PAVLOVICH, chief sponsor stated this bill is to revise and clarify the gambling laws concerning electronic machines. The purpose is to make legal the county's option to decide if they want these machines. EXHIBIT 2, a list of amendments, and EXHIBIT 3, a newspaper article were handed out. REP. PAVLOVICH stated there was a bill in the senate similar to this that was killed. The problem was to leave it up to the county.

These are not slot machines. They have 78-81% pay off. With these machines you play against the machine.

BOB DURKEE, Montana Tavern Association, was in support of the bill. DURKEE felt killing the bill is not the answer. It needs to be defined who is responsible. With the proposed amendments it is

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 20, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

HOUSE BILL 803 REP. BRAND, chief sponsor stated this bill's purpose is to change the definition of "peace officer" to include persons who are responsible for the care or custody of a prisoner. This will change the law when an inmate hits a prison guard it will be considered a felony instead of a misdemeanor. There seems to be no end to the violence inflicted upon the prison guards from inmates.

THOMAS SCHNIDER, MPEA, supports the bill. An attack on a prison guard was changed from felony to misdemeanor charge a few years ago. This will change it back. EXHIBIT 1 was given.

MIKE MORRIS, Montana State Prison, supported the bill. The situation is getting out of hand. Every time a man is sentenced he can appeal it many times. This situation is troublesome throughout the United States. It is very important to pass this bill. Inmates are allowed to get away with anything. There is a turnover rate of 60% every year at the prison because of the conditions. The backing is needed from the state.

SERGEANT RORNMOUS, Montana State Prison, stated today most prisoners are serving 100 years under no parole or furlough. The crime situation has changed. Several years ago 75% of the crimes of prisoners were money or nonviolent crimes and 25% were violent crimes. Today that situation is reversed. This situation happens at an alarming rate. Recently one guard was shot with a homemade dart. The prisoner received 6 months which was suspended. A prison guard is no different than a peace officer. They are working with known felons. The same basic training is received and federal and state laws have to be observed by the guard.

There were no opponents.

In closing the sponsor felt this is a serious problem. There are more heart attacks and mental problems of these guards all the time.

REP. TEAGUE asked if there was a possibility this could go the opposite way. It was possible it could happen. If a prison guard hits a prisoner he could be suspended. A guard is not likely to cause trouble when he is outnumbered 620 to 1.

FRANK WELCH told the committee the guards are governed by state laws. If they overstep those boundaries they are subject to rules. They might end up being an inmate themselves if they are not careful.

HOUSE BILL 690 REP. KEEDY moved do pass. The motion carried unanimously.

HOUSE BILL 698 REP. MCLANE moved do pass.

REP. HANNAH moved to insert "civil" on page 4, line 25 following "constitutes" and to strike through line 2 on page 5 following "contempt". The motion passed unanimously.

REP. MCLANE moved do pass as amended. The motion carried unanimously.

HOUSE BILL 703 REP. EUDAILY moved do pass.

REP. HANNAH was against the motion. Children are in the middle of divorces. Problems will increase concerning remarriages. REP. CURTISS Agreed.

REP. HUENNEKENS stated if there had to be a divorce he would want the opportunity to continue to see and have contact with his children. REP. HANNAH agreed with that but was not comfortable with the bill.

REP. SEIFERT thought this would create more problems than it would solve. Joint custody will add to the problems.

REP. CONN thought it was a good bill since children and parents need each other when divorce occurs.

REP. MATSKO stated with joint custody a parent can take the child away from the other parent. Police officers cannot do anything since they both have custody. This bill could result in those types of problems.

REP. SHELDEN stated this bill gives the courts and the people involved a way to go.

REP. BENNETT made a motion to insert "with the consent of both parties" after "may" on line 16, page 3. The amendment resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, IVERSON, ANDERSON, DAILY, HUENNEKENS, and TEAGUE. Those voting no were: CONN, EUDAILY, HANNAH, MATSKO, MCLANE, ABRAMS, SHELDEN and BROWN. The amendment passed 9 to 8.

REP. EUDAILY moved do pass as amended. The motion carried with SEIFERT, MCLANE, CURTISS and HANNAH voting no.

ROLL CALL

JUDICIARY

COMMITTEE

47th LEGISLATIVE SESSION, 1981

FEBRUARY/MARCH

Name	Date													
	17	18	19	20	22	23	3	4	5	6	9	10	11	12
Kerry Keyser, Chairman	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Carl Seifert, Vice Chr	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Gary Bennett	X	X	X	X	X	X	X	X	X	X	X	A	X	X
Alison Conn	E	X	X	X	X	X	X	X	X	X	A	X	X	A
Aubyn Curtiss	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Ralph Eudaily	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Tom Hannah	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Dennis Iverson	X	X	X	X	X	X	E	X	X	E	X	X	X	X
John Matsko	X	X	X	X	X	X	X	X	X	E	X	X	X	X
Jean McLane	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Bob Anderson	X	X	X	X	X	X	X	X	X	X	X	X	X	A
Fritz Daily	X	X	X	X	E	X	X	X	X	X	X	X	X	E
Hubert Abrams	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Herb Huennekens	X	X	X	X	X	E	X	X	E	E	E	E	E	E
Art Sheldon	X	X	X	X	X	X	X	X	A	X	E	X	X	X
Michael Keedy	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Wes Teague	X	X	X	X	X	X	A	X	X	X	X	X	X	E
Dan Yardley	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Dave Brown	X	X	X	X	X	X	X	X	X	X	X	X	X	X

X = Present

A = Absent

E = Excused Absent

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

<u>HOUSE</u> BILL NO.	<u>ENTERED</u> COMM.	<u>DATE</u> CONSIDERED	<u>OUT OF</u> COMM.	<u>DO PASS</u> DATE	<u>DO NOT</u> PASS DATE	<u>DO PASS</u> AS AMEND. DATE	<u>BE CON-</u> CURRED IN DATE	<u>BE CONC. IN</u> AS AMENDED DATE	<u>BE NOT CON-</u> CURRED IN DATE
HB 535	3/03/81	3/16/81	3/17/81				3/17/81		
HB 536	3/03/81	3/16/81	3/25/81				3/25/81		
HB 537	3/03/81	3/16/81	3/17/81				3/17/81		
HB 538	3/04/81	3/19/81	3/23/81					3/23/81	
HB 598	2/18/81	3/05/81	3/05/81					3/05/81	
HB 612	3/04/81	3/19/81	3/21/81						3/21/81
HB 621	2/18/81	3/16/81	3/17/81					3/17/81	
HB 626	3/03/81	3/10/81	3/16/81						3/16/81 (amende
HB 656	2/23/81	3/05/81	3/25/81	tabled					
HB 678	3/03/81	3/19/81	3/21/81				3/21/81		
HB 689	3/03/81	3/10/81	3/24/81					3/24/81	
HB 690	3/03/81	3/10/81	3/14/81				3/14/81		
HB 698	3/04/81	3/18/81	3/21/81				3/21/81		
HB 703	3/04/81	3/18/81	3/25/81					3/25/81	
HB 711	3/04/81	3/18/81	3/18/81				3/18/81		
HB 713	3/04/81	3/17/81	3/21/81				3/21/81		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 10, 1981

The thirty-ninth meeting of the Senate Judiciary Committee was called to order by Senator Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 689:

PROVIDING FOR THE COMPULSION OF
INCRIMINATING TESTIMONY OF WITNESSES
BEFORE COURTS, STATE AGENCIES, AND
THE LEGISLATURE.

Rep. Matsko, District 38, presented the bill on behalf of Rep. Keyser, saying that it was closely patterned after federal guidelines, and that its purpose is to remove the transactional immunity that is currently in state law.

Tom Honzel, representing the County Attorneys Association, supported the bill, stating that there is another bill to be heard later this week in this committee which should have some of its language included in HB 689 if it passes the committee.

Speaking in opposition, Karen Mikota, representing the League of Women Voters, said that her group feels that the committee should very carefully consider the sweeping change brought about by changing from transactional immunity to use immunity. She said that on page 3, line 4, "shall" should be changed to "may", and she objected to the repealer on 46-4-305.

Rep. Matsko said that repealing 46-4-305 was a change which he did not know about, and agreed that it should be stricken.

Senator Anderson asked him to check back with his researcher to find out why the repealer had been included, and to give the information to this committee.

Senator Halligan stated that he did not feel from the testimony presented that a definite problem exists with the current law, and for that reason questioned the need for the bill. Rep. Matsko replied that too often the guilty parties who testify walk away free and clear, even though they were principals in the crime.

Senator Mazurek asked Rep. Matsko to comment on Karen Mikota's point relative to page 3, line 4. He replied that the bill was drafted intentionally to remove some of the discretion from the judges. Senator Mazurek said that he feels this would remove the discretion from the judge and give it to the county attorney. Matsko replied that it already lies with the county attorney relative to a law-abiding citizen.

CONSIDERATION OF HOUSE BILL 690:

TO GENERALLY REVISE AND CLARIFY CHAPTERS
PERTAINING TO POSTCONVICTION AND HABEAS
CORPUS RELIEF.

This bill was presented by Rep. Keedy, on behalf of Rep. Keyser. Rep. Keedy said that it was hoped that this bill will induce a defendant to seek relief in a shorter period of time so that witnesses, prosecutors, etc., are still alive and able to be located. Another purpose of the bill is to prevent retrying over and over grounds which have been found deficient.

John Maynard, assistant attorney general, who had helped draft the bill because of problems in his office with postconviction relief cases, spoke in support of it. He said that nothing about this bill restricts the defendant's access to the courts. When a defendant is convicted he has four avenues open -- appeal, postconviction relief (the only area affected by this bill), executive clemency, or going to the federal courts. This bill, in affecting only the one stage, helps to promote the finality of convictions, to avoid piecemeal litigation of claims, and to expedite the processes.

Tom Honzel supported the bill on behalf of the County Attorneys Association.

Senator O'Hara asked if this bill was an attempt to correct some of the current unhappiness people have with the legal system, and Mr. Maynard said that it is, and quoted the McKenzie case as an example.

Senator Mazurek asked about the relationship between sections 2 and 7 with habeas corpus, and Mr. Maynard discussed the other avenues which would be open to a defendant if habeas corpus were not.

In closing, Rep. Keedy said that the people of Montana seem to want this legislation.

CONSIDERATION OF HOUSE BILL 626:

TO REPEAL THE "EXCLUSIONARY RULE";

STATE
OF
MONTANA
**ATTORNEY GENERAL
MIKE GREELY**

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 441-2926

*Refer: I would appreciate placing this in
the testimony file received on
HB 690. I inadvertently forgot
to send it to you.
Mike Halligan*

MEMORANDUM

13 March 1981

To: THE HONORABLE SENATOR JOE MAZUREK
State Capitol Building
Helena, Montana 59601

From: JOHN H. MAYNARD
Assistant Attorney General

Re: HB 690

Persons who have been convicted of crimes generally have four (4), and arguably five (5), avenues by which they can seek relief. These include (1) direct appeal [46-20-101 et seq., MCA]; (2) postconviction relief [46-21-101 et seq., MCA]; (3) state habeas corpus [46-22-101 et seq., MCA]; (4) executive clemency [46-23-301 et seq., MCA]; and (5) federal habeas corpus [42 U.S.C. 2254]. Since 1967, when the current statutes relative to postconviction relief were enacted, the distinction between postconviction relief and state habeas corpus has been hazy. Among other things, HB 690 clarifies that distinction. The bill only addresses postconviction relief and state habeas corpus. The three remaining statutory avenues for obtaining relief from a criminal conviction are not affected by HB 690.

The bill changes current law by addressing three areas of concern in criminal justice: finality of judgments, repetitious litigation, and efficiency of the process. Each of the eight suggested changes in the law is based on one or more of these three concerns.

First, HB 690 seeks to eliminate unnecessary delay in adjudicating petitions for postconviction relief by removing the provision that an individual justice of the supreme court may "vacate, set aside, or correct the sentence." (page 1, line 25.) According to rules to be used in postconviction proceedings, promulgated by the supreme court in 1979, only

the court as a whole may act on a petition for post-conviction relief. Therefore, when someone not unfamiliar with the rules of court petitions an individual justice, delay can result in cases where the justice may be on vacation or may not have time to read the petition for several weeks before, realizing what it is, he submits it to the full court for consideration.

The second change (page 2, line 4) in the law establishes a 5 year limit within which a person seeking relief must file a petition for postconviction relief. After 5 years he may still seek relief through executive clemency or federal habeas corpus. This provision promotes finality in criminal proceedings and encourages potential petitioners to proceed expeditiously in seeking remedies. Along that line it prevents a person with a colorable claim from waiting to present it until a time when the state might be unable to re-prosecute him if he is successful. If, for example, a person withdraws a guilty plea after ten years, the chance that the state could convict him at a trial after so much time has passed is almost nonexistent. The necessary evidence would have been lost.

The third change (page 2, line 16) presented in HB 690 speeds up the process by which petitions are handled by requiring that the petitioner's arguments in support of his petition be submitted at the same time he submits his petition. This also allows the state to respond more intelligently to the petition because it is often difficult to understand the nature of a claim that is unaccompanied by any argument.

The fourth change (page 2, line 24) requiring petitioner's to raise all of the claims they are aware of in their first petition, is designed to discourage piecemeal litigation of claims. If a person has five issues he wishes to present he should be required to present them all at once in the same petition rather than being allowed to present them one at a time in successive petitions. In this way a single hearing could be sufficient whereas five might be necessary when the individual is permitted to present new issues time and again without ever reaching the end.

The fifth change (page 3, line 3) prevents repetitious litigation by encouraging persons to raise all of the issues they intend to raise on direct appeal and not save issues for presentation at a later time in a petition for post-conviction relief. As a practical matter many persons would raise all of the issues they are aware of the first time

around. But in some cases, especially cases involving the death penalty, saving issues delays the finality of the conviction and therefore becomes a part of the strategy in pursuing relief in those cases.

The sixth change (page 3, line 14) providing for a written response from the State prior to a hearing on the petition, furthers the interest of expediting the process of handling petitions for postconviction relief. It establishes a procedure which in many cases, will eliminate the need for a hearing when the petition is frivolous and lessen the possibility that there would need to be more than one hearing in cases where it is not.

The seventh change (page 4, line 10) changes the time within which a person must decide to appeal a denial of postconviction relief from 6 months to 60 days. In many cases this will speed up the process of finally determining the claim and it will conform the time limit to the time limit present for all other criminal and civil appeals.

Finally, the eighth, and perhaps most important change (page 4, line 14) distinguishes between postconviction and habeas corpus relief in the Montana Code. This eliminates a great deal of confusion which now exists among those affected by these statutes and avoids repetitious litigation of identical claims.

Because of the changes proposed in this bill, one might ask why not eliminate postconviction relief altogether. Among other things postconviction relief can be a relatively quick way of correcting errors which may have been made by the trial court, the court which in all fairness should have the first opportunity to review and respond to allegations of error.

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 10, 1981

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

DATE March 10, 1981COMMITTEE ON JUDICIARY

HB 689

HB 690

HB 626

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Karen Mikota	LWV of Montana	689		✓
Jack Williams	State Chiefs of Police	690		✓
John Manuacci	Attorney General	626	✓	✓
Joan Peterson	Intern	626		
Jusen Peterson	Leg. Aide	626		
Albert Petty	MT. Sheriff Assoc.	626		✓
John Hagan	U. of M.			
Chuck O'Reilly	Int. Sheriff Assoc.	626		✓
John Scully	" "	626		✓
ALAN J. G.	Committee on			
Rep. Town G. Maysko	SELF	626	✓/present	

NAME: John Maynard

DATE: 3/10/81

ADDRESS: Rm. 225 - State Capitol

PHONE: 449-2026

REPRESENTING WHOM? Attorney General

APPEARING ON WHICH PROPOSAL: H13690

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 14, 1981

The forty-third meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF HOUSE BILL 110:

Senator Halligan moved to amend the bill on line 25, following "term of" by inserting "not less than", and following "5 years" by inserting "or not more than 10 years". His motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 99:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed over the objection of Senators Halligan and Mazurek.

DISPOSITION OF HOUSE BILL 213:

Senator Mazurek moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 154:

Senator Halligan moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 96:

Senator O'Hara moved that the bill be amended on page 1, line 23, following "property", by inserting "for less than fair market value", and his motion passed unanimously. Senator O'Hara then moved that it BE CONCURRED IN AS AMENDED, and his motion passed over the objection of Senator Olson.

DISPOSITION OF HOUSE BILL 534:

Senator Berg moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 690:

Senator O'Hara moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 6:

Senator Mazurek moved to amend the bill on page 3, lines 22 and 23, as shown on the attached Committee Report, and his motion passed unanimously. Senator O'Hara moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 371:

Senator Halligan moved that the bill BE NOT CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 316:

Senator Mazurek moved that the bill BE NOT CONCURRED IN, and his motion passed over Senator O'Hara's objection.

DISPOSITION OF HOUSE BILL 379:

Senator Mazurek moved that the bill be amended on pages 1 and 2, as shown on the attached Committee Report, and his motion passed unanimously. Senator Mazurek then moved that the bill BE CONCURRED IN AS AMENDED, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 93:

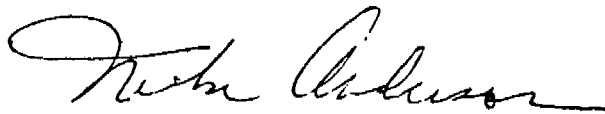
Senator Berg moved that the bill BE NOT CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 284:

Senator Crippen moved that the bill BE CONCURRED IN, and his motion passed unanimously.

DISPOSITION OF HOUSE BILL 207:

Senator Mazurek moved that the bill BE NOT CONCURRED IN, and his motion passed unanimously.



Mike Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date March 14, 198

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

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STANDING COMMITTEE REPORT

March 14, 1931

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 690
KEYSER (MAZUREK)

Respectfully report as follows: That HOUSE Bill No. 690

~~DO PASS~~
BE CONCURRED IN

1 HOUSE BILL NO. 690
2 INTRODUCED BY KEYSER, KEEDY, MATSKO,
3 MOORE, BENNETT
4 BY REQUEST OF THE HOUSE JUDICIARY COMMITTEE
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
7 CLARIFY CHAPTERS 21 AND 22 OF TITLE 46, MCA, PERTAINING TO
8 POSTCONVICTION AND HABEAS CORPUS RELIEF; AMENDING SECTIONS
9 46-21-101, 46-21-102, 46-21-104, 46-21-105, 46-21-201,
10 46-21-203, AND 46-22-101, MCA."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 46-21-101, MCA, is amended to read:
14 "46-21-101. Circumstances in which validity of
15 sentence may be challenged. A person adjudged guilty of an
16 offense in a court of record who has no adequate remedy of
17 appeal and who claims that sentence was imposed in violation
18 of the constitution or the laws of this state or the
19 constitution of the United States, that the court was
20 without jurisdiction to impose the sentence, or that the
21 sentence was in excess of the maximum authorized by law or
22 is otherwise subject to collateral attack upon any ground of
23 alleged error available under a writ of habeas corpus, writ
24 of coram nobis, or other common law or statutory remedy may
25 petition the court which imposed the sentence, or the

1 supreme court, ~~or any justice of the supreme court~~ to
2 vacate, set aside, or correct the sentence."
3 Section 2. Section 46-21-102, MCA, is amended to read:
4 "46-21-102. When petition may be filed. A petition for
5 such relief may be filed at any time after within 5 years of
6 the date of the conviction."
7 Section 3. Section 46-21-104, MCA, is amended to read:
8 "46-21-104. Contents of petition. The petition shall
9 identify the proceeding in which the petitioner was
10 convicted, give date of the rendition of the final judgment
11 complained of, and clearly set forth the alleged violation
12 or violations. The petition shall have attached thereto
13 affidavits, records, or other evidence supporting its
14 allegations or shall state why the same are not attached.
15 They shall identify any previous proceedings that the
16 petitioner may have taken to secure relief from his
17 conviction. Arguments The petition must be accompanied by a
18 supporting memorandum including appropriate arguments and
19 citations and discussion of authorities ~~shall be omitted~~
20 ~~from this petition.~~"
21 Section 4. Section 46-21-105, MCA, is amended to read:
22 "46-21-105. What grounds for relief waived if not
23 raised. All grounds for relief claimed by a petitioner under
24 this chapter must be raised in his original or amended
25 petition. Any grounds ~~other than constitutional grounds~~ not

1 so raised are waived unless the court on hearing a
 2 subsequent petition finds grounds for relief asserted
 3 therein which could not reasonably have been raised in the
 4 original or amended petition. When a petitioner has been
 5 afforded a direct appeal of his conviction, grounds for
 6 relief that could reasonably have been raised on direct
 7 appeal may not be raised in his original or amended
 8 petition."

9 Section 5. Section 46-21-201, MCA, is amended to read:

10 "46-21-201. Proceedings on the petition. (1) Unless
 11 the petition and the files and records of the case
 12 conclusively show that the petitioner is entitled to no
 13 relief, the court shall cause notice thereof to be served
 14 upon the county attorney in the county in which the
 15 conviction took place, and the attorney general and order
 16 them to file a responsive pleading to the petition.
 17 Following its review of the responsive pleading, the court
 18 may dismiss the petition as a matter of law for failure to
 19 state a claim for relief or it may grant a prompt hearing
 20 thereon, determine the issue, and make findings of fact and
 21 conclusions with respect thereto.

22 (2) The court may receive proof by affidavits,
 23 depositions, oral testimony, or other evidence. In its
 24 discretion the court may order the petitioner brought before
 25 the court for the hearing.

1 (3) If the court finds in favor of the petitioner, it
 2 shall enter an appropriate order with respect to the
 3 judgment or sentence in the former proceedings and such
 4 supplementary orders as to reassignment, retrial, custody,
 5 bail, or discharge as may be necessary and proper. If the
 6 court finds for the state, the petitioner shall be returned
 7 to the custody of the person to whom the writ was directed."

8 Section 6. Section 46-21-203, MCA, is amended to read:

9 "46-21-203. Review. Either the petitioner or the state
 10 may appeal to the supreme court of Montana from an order
 11 entered on the petition. The appeal must be taken within 6
 12 months from 60 days of the entry of the order."

13 Section 7. Section 46-22-101, MCA, is amended to read:

14 "46-22-101. Who may prosecute writ. (1) Every Except
 15 as provided in subsection (2), every person imprisoned or
 16 otherwise restrained of his liberty within this state may
 17 prosecute a writ of habeas corpus to inquire into the cause
 18 of such imprisonment or restraint and, if illegal, to be
 19 delivered therefrom.

20 (2) Relief under this chapter is not available to
 21 attack the validity of the conviction of a person who has
 22 been adjudged guilty of an offense in a court of record and
 23 has exhausted his remedy of appeal. Relief for such purposes
 24 is limited to the provisions of Title 46, chapter 21."

-End-